

Appendix R

Three statements by the Vice Chancellor on Mr Kupka's doctoral research

- (a) Memorandum to members of the University Council and the Postgraduate Studies Committee, 10 April 2000**
- (b) Report to the University Council, 9 August 2000**
- (c) Submission to the Review**

10 April 2000

To: Members of Postgraduate Studies Committee
Members of Council

You will have received, I understand, a copy of a letter written by Professor Dov Bing to Professor Sue Middleton and dated 2 April. The letter, accompanied by a number of enclosures, addresses the case of a doctoral student at this University, Mr Hans Joachim Kupka. I felt that you should hear from me as to the University's formal position on this matter.

The allegations concerning Mr Kupka have been circulating for well over a year. Repeated requests have been made for evidence to support the allegations. The evidence so far submitted does not, in my view, support the allegations. This is also the view reached by other University staff and committees, and by the Human Rights Commission and the Race Relations Conciliator.

The letter from Professor Bing contains a number of factual inaccuracies, particularly about the University processes which have been applied to considering the Kupka case. It should first be noted, that regrettably, the University is in danger of breaching the confidentiality and privacy of this student through the publication of Professor Bing's letter and the enclosures.

Mr Kupka's case has been handled by the Postgraduate Studies Committee in an exemplary fashion. The process has been entirely in conformity with our normal procedures. Allegations against particular members of staff, including successive deans of the School of Humanities (now the Faculty of Arts and Social Sciences) and against Associate Professor Volker Knuferrmann, are entirely without foundation. They have each applied the normal processes and standards of the University to this case.

The University takes very seriously indeed all issues of "cultural safety". That is why the University mediator has undertaken a full enquiry into the case and has made a full investigation of all the allegations. It is also why she referred these issues formally to the Human Rights Commission and the Office of the Race Relations Conciliator for their opinions. The opinion of these authorities is that the publications from Mr Kupka of which complaint is made do not breach the Human Rights Act. We are advised that any action taken against Mr Kupka by the University could be regarded as harassment and a breach of the Human Rights Act.

The University's Human Ethics Committee has been involved in establishing with Mr Kupka the ethical concerns which his research must meet. That process is on-going.

I am satisfied that the University has discharged its obligations to its student and to all others of its stakeholders in a proper and even-handed way. "Cultural safety" is of great concern to us but so too is freedom of expression

You may be interested to know that, in addition to the allegations made about Mr Kupka, I am now considering formal complaints against the University from a number of other parties to this dispute.

Bryan Gould
VICE-CHANCELLOR

Report to Council on the Kupka Case

1. The withdrawal of Hans Joachim Kupka as an enrolled PhD student means that he no longer has any connection with this University and in that sense the episode is now at an end. Since he is no longer within our jurisdiction, there is no any action the University could take against Mr Kupka even if it wished to do so.
2. It is suggested, however, that the matter should not be laid to rest but that an inquiry of some sort should be held into the University's handling of the matter. The purpose of such an inquiry would be to establish whether or not the University had made mistakes so that – presumably - these could be acknowledged and the University could ensure that they were not repeated in any future case.
3. This step should be taken, in my view, only if there were a priori reasons for believing that such mistakes had been made. I have accordingly made careful inquiries as to the way in which the University responded to the various issues which have been raised.

The Academic Issues

4. The first set of issues concern the question of whether, on academic grounds, Mr Kupka should have been enrolled in the first place and whether in any respect he was offered special treatment. Having consulted the Chair of the Postgraduate Studies Committee, Professor Michael Selby, I am satisfied that he was admitted on grounds which were generally applicable and that he was qualified on academic grounds to be enrolled as a PhD student. I am not aware of any University which would not regard a holder of its Master's degree as qualified to enter a doctoral programme. The various allegations that have been made at times – for example, that his grades were falsified or manipulated and so on - are entirely without foundation.
5. The allegation that he was shown special favour by, for example, being allowed to write his thesis in German is also groundless. The University's regulations make it clear that a thesis may be written in a foreign language if there is good reason for doing so. The reason in this case was that the thesis concerned the use of the German language and would therefore be largely dealing with German-language text. It would have been pointless to require an English-language treatment of what was essentially to be an analysis of that German-language text.
6. I am satisfied that the Higher Degrees Committee (now the Postgraduate Studies Committee) fully considered all of these issues and arrived at the correct conclusions. I therefore believe that the University, through its appropriate Committee, dealt with this case properly in this respect. As it happens, the University has recently undertaken a comprehensive review of its processes for handling postgraduate and research studies and those processes will soon be reviewed in turn by the Academic Audit Unit.

Mr Kupka's Views

7. The next set of issues concern the allegations that Mr Kupka held extreme political views, was an anti-Semite and denied the Holocaust. The particular evidence submitted in support of these allegations was an internet correspondence which Mr Kupka had entered into in his private capacity and which had no direct link with his research. In the course of that correspondence, he had, on a few occasions and usually in response to questions, identified himself as a student of the University of Waikato. It was only in this sense that the University directly entered the picture.

8. The charge of extreme political views against Mr Kupka was partly based on reports of his membership of the Republican Party in Germany. This is an extreme right-wing party but it is not proscribed. It would be difficult and almost certainly illegal for the University to discriminate against him on the ground of his political views and activities on this basis.

9. It has also been reported over recent days that he is being investigated in Germany for offences under German law. No charges have yet been brought, let alone convictions obtained.

10. The allegations of anti-Semitism and Holocaust denial are based on statements he made during the course of his internet correspondence. He certainly expressed views which many people, including myself and I would imagine the majority of people on campus and in the community as a whole, would disagree with profoundly. He was offensively critical of the writer on the Holocaust and Nobel Peace Prizewinner, Elie Wiesel. He also expressed views of a nationalistic nature and was impatient with those who continue to hold the German people to account for the Holocaust.

11. The main charge against him was based on a statement of which his critics often gave a partial and therefore misleading account. He was asked by an internet correspondent about his views on the numbers of people killed in the Holocaust. He replied to the effect that he had seen estimates varying from 340,000 to 6,000,000 and that even these estimates were less than precise because they failed to take account of those who may have died of natural causes in the concentration camps. He went on to say however that an emphasis on the figures alone was an accountant's pre-occupation because the fact remained that many people were killed in the concentration camps. The full statement is therefore hard to reconcile with the allegation that it represented a denial of the Holocaust.

12. The allegations against him on this score were referred to the University mediator. She conducted a thorough inquiry and a review of the statements he was alleged to have made. She consulted me on the matter and told me of her view that it would be difficult for the University to justify taking action against Mr Kupka on the basis of what he had said on the internet. On my advice, she sought the advice of the Human Rights Office and the Race Relations Conciliator. They confirmed to her that there would be no ground for prosecuting Mr Kupka under New Zealand law for the remarks he had made and that to discriminate against him on the basis of those remarks would be to run the risk of violating his human rights under New Zealand law.

13. We were therefore faced with the issue of whether what Mr Kupka had said was in fact so extreme as to warrant debarring him as a student. We had to bear in mind the possibility that, if we were to take that action, we might have to defend ourselves in court and that the advice we had received from the Race Relations Conciliator and others would then become material. Our conclusion was that, offensive as Mr Kupka's remarks were in some instances, they were not such clear-cut statements of anti-Semitism or denial of the Holocaust as to provide a secure basis for taking the extreme step of debarring him as a student and that we would therefore be on very shaky ground if we were to attempt to terminate his enrolment.

14. Paradoxically, this view of his remarks was to some degree confirmed by the expert evidence produced by complainants. The experts conceded that Mr Kupka's remarks did not directly amount to a denial of the Holocaust but that he used "coded language" in order to suggest rather than state his true opinions. We felt that this was somewhat insubstantial ground on which to take the very extreme action of refusing to admit him as a student or of terminating his enrolment.

The Issues of Cultural Safety

15. The third set of issues concern the steps which the University took to ensure that Mr Kupka's research could proceed in a way that would meet the very proper requirements of cultural safety and the prevention of offence to those with whom Mr Kupka had dealings. It is worth reminding ourselves at this point that Mr Kupka's research had nothing directly to do with the Holocaust or related issues and was directed to an unexceptionable inquiry as to the use of the German language by German-speaking communities in New Zealand. The issue of cultural safety arose, not because of the nature of the research, but because of Mr Kupka's association with views which had become a matter of controversy. This aspect of Mr Kupka's case distinguishes our problem from that faced by the University of Canterbury where a thesis denying the Holocaust was awarded a doctoral degree.

16. When it became apparent that Mr Kupka wished to use a questionnaire for the purposes of his research, the matter was referred as a matter of course to the Faculty of Arts and Social Sciences Ethics Committee. They ensured that the questionnaire was in proper form and that it could safely proceed. The usual University requirements in this respect were satisfied.

17. A further issue then arose as to whether Mr Kupka could safely be allowed to approach members of the German-speaking community in New Zealand, given the probability that some German-speaking people would be of Jewish origin. There was clearly a danger that many such people would be offended by virtue of what they had heard or read of Mr Kupka's views, whether or not they amounted technically to Holocaust denial. That matter was properly referred to and acted upon by the University's Ethics Committee.

18. The Ethics Committee began by suspending Mr Kupka's research pending a satisfactory resolution of the issues. The suspension lasted four or five months and was eventually brought to an end by Mr Kupka's withdrawal as a student on the grounds that the conditions required of him by the Ethics Committee (which included a prohibition on his approaching directly any recipient of the questionnaire) would make his research difficult, if not impossible. In other words, the University's requirements as to cultural safety were eventually seen by Mr Kupka as a hurdle which it would be difficult for him to surmount. Having consulted the Chair of the Ethics Committee, Associate Professor Al Gunn, I am satisfied that the Ethics Committee discharged its responsibilities properly and responsibly.

Conclusion

19. The conclusion I reach from this lengthy recital of events is that, on each of the groups of issues which were raised - ie the academic issues, the question of Mr Kupka's views, and the issues of cultural safety - the University acted properly and could not have acted in any other way. The usual requirements as to admission were applied to Mr Kupka, we conducted a proper inquiry and sought the correct advice on whether or not he could be debarred on account of his views, and the issues of cultural safety were not only properly canvassed and applied but eventually led to his withdrawal.

20. In these circumstances, I see no point in setting up a further inquiry into the matter. The mere setting-up of such an inquiry would be seen in some quarters as a concession that the University had acted improperly in some way, which I do not believe to be the case. I have complete confidence in those members of academic staff, the University Mediator and in the relevant committees who dealt with the matter. I would be reluctant to take a step which implies some degree of reproach or censure in regard to staff who on the contrary deserve support and commendation for the way in which they have dealt with these difficult issues.

Bryan Gould
VICE-CHANCELLOR
9 August 2000

THE KUPKA CASE

Vice-Chancellor's Submission

1. My position on many of the issues raised by the Kupka case has been set out in detail in a number of letters and statements, particularly in my statement to Council dated 9 August 2000 (copy attached). These papers are all in the written record. I wish therefore in this submission to comment or comment further only on those issues which I feel are not adequately dealt with in the statements I have made so far.
2. I first became aware of the Kupka case at the end of 1999 when the University mediator, Bethea Weir, alerted me to the fact that she was dealing with a difficult case. Either at that point, or possibly at a subsequent meeting early in 2000, she told me of her preliminary finding that the case for cancelling Mr Kupka's enrolment had not been made out. I discussed the issues with her and advised that we should seek advice from the Human Rights Commissioner and/or the Race Relations Conciliator. This she did. The advice from the Race Relations Conciliator, while not conclusive, pointed in the same direction as her provisional conclusion. Dr Prasad's later comments on the issue, which take him well beyond his own jurisdiction, are best regarded as a political response to pressure subsequently put upon him.
3. I was well aware at this point that the University was caught in a dilemma from which there would be no easy escape. On the one hand, there were strong and understandable reactions by staff and others, both Jewish and non-Jewish, to views which on any reckoning were distasteful to many people and which carried strong overtones of nationalism and anti-semitism. They would argue strongly that the University should not harbour – as a doctoral student – someone who held and expressed these views, particularly if his research was likely to bring him into contact with those who would be particularly likely (by virtue of their own personal, family and cultural backgrounds) to be injured by those views.
4. On the other hand, there were two sets of considerations which the University could not ignore. It had first to pay regard to the law of the land. To take action against Mr Kupka, and particularly to deny him enrolment as a student on the grounds put forward, would undoubtedly be a breach of his human rights and might have to be justified in a court of law. I could not lightly expose the University to a possible liability for substantial damages. The advice from the Race Relations Conciliator had to be taken into account on this issue.
5. Secondly, and perhaps more importantly, the University had a responsibility to remain true to the principles of academic freedom which have guided universities over the centuries. To deny admission to a student, or to cancel his enrolment, on account of his political views would be a serious step for any university and one

which, while one could not say it should never be contemplated, should be considered only in the most extreme case. It was in my view worrying that so many people of whom one might have expected something different were prepared to abandon any commitment to freedom of speech on the ground that the views expressed in this case were abhorrent to them. The principles of academic freedom and freedom of speech more generally count for little if they are not maintained in situations where the views at issue are strongly condemned by a significant number of people. The loudness of the voices raised against those views should not be the criterion applied to decide whether or not those views should be silenced.

6. In trying to balance these considerations, I had to judge whether the case of Mr Kupka was so clear-cut as to warrant *a university* taking the extreme step of denying freedom of speech and the freedom to pursue academic research to one of its students. In making this judgment, I took into account that:
 - Mr Kupka had identified himself as being connected with the University only in a fleeting sense
 - the remarks complained of had been made by Mr Kupka in his private capacity and in the course of an internet correspondence which had nothing to do with his academic work.
 - the remarks complained of were far from a straightforward denial of the holocaust . While they were undoubtedly redolent of extreme right-wing and nationalistic sentiments, they used – as one of the expert witnesses adduced by the complainants conceded – “coded language” to convey anti-semitic and holocaust-denying views.
 - none of the other charges raised against Mr Kupka – that he was a member of an extreme political party or that he was to be the subject of investigation for alleged criminal acts in Germany – was relevant to the issue confronting the University.
7. In the light of these considerations, I judged that this was not such a straightforward and extreme case as to warrant the University taking the virtually unprecedented step of cancelling the enrolment of a student so as to preclude him from continuing his studies. (It was clear that the University could not take this step without implicitly recommending it to other institutions, so that we would in effect be saying that Mr Kupka should not be allowed to pursue his studies at any institution).
8. I decided that the preferable course would be to entrust his case to the University’s well-established and proven procedures which were, in my view, well able to give proper weight to the various issues raised by the case, including the ethical issues and the issues of cultural safety. My concern was therefore to ensure that those procedures were properly applied – from the viewpoint of both the complainants and (since Mr Kupka, his supervisors and others were also aware of the issues) of those complained of. I monitored the process pursued by the relevant committees very carefully (without directing them as to outcomes) and was satisfied that conscientious University academics and other staff were behaving with complete propriety. The outcome of this course of action was the not unwelcome one that Mr Kupka decided

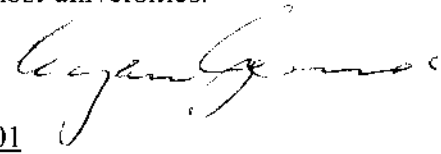
that, in view of what he regarded as onerous restrictions imposed upon him by the University's Human Research Ethics Committee, he should withdraw.

9. Some of the issues raised about the case were and are not relevant in my view to the central question of whether Mr Kupka, having been enrolled, should then have had his enrolment cancelled. While I was and am satisfied that there was no substance to the allegations made, issues such as whether he was properly qualified to enter a doctoral programme, or the terms on which he was permitted to produce a thesis, could be relevant to the issue of his alleged anti-semitism only if it were alleged that his whole period as a student with us was the product of a conspiracy on the part of some members of staff – dating back to the point when he first entered the University and long before the views he expressed on the internet were known about - to cloak his political views with the respectability of being an enrolled student at the University. This allegation, implied or explicit, seems so fanciful as not to warrant serious consideration.
10. Parallels have been drawn from time to time between the Kupka case and that of Dr Joel Hayward at Canterbury University. The differences between the two cases are, however, so significant that it is not surprising that they should be approached differently.
 - In the Hayward case, his thesis was directly on the subject of the holocaust; Mr Kupka's proposed research did not concern the holocaust.
 - Dr Hayward concluded specifically, in terms and at substantial length that the holocaust did not take place; Mr Kupka's comments on the holocaust were, at most, occasional and cryptic.
 - Dr Hayward published a substantial supervised thesis for the award of a University doctorate; Mr Kupka made comments in a private capacity on the internet.
 - Dr Hayward was awarded a doctorate for his work; Mr Kupka found himself unable even to begin his research because of the care the University took in dealing with his case.
11. In brief, the University's processes worked well and produced an outcome which, given the strength of feeling aroused by the case, was the best that could be hoped for. The University did not betray the important principles of academic freedom but was able, by applying its normal processes fairly and impartially, to ensure that proposed research would be carried out in such a manner as to protect those who might be offended by the views attributed to the researcher. In the event, the student – rather than comply with these requirements – chose to withdraw.
12. It is hard to know what is now expected of the University by those who remain dissatisfied. The only way in which the University could behave differently in any future case would be to subject doctoral candidates and perhaps other students to some form of political investigation to ensure that they were unlikely to express views in a private capacity which might, if attention were drawn to them, embarrass the University, and then refuse or withdraw enrolment if the candidate could not

satisfy them in that respect. This is not a course of action which would commend itself to most universities.

Bryan Gould

9 January 2001

A handwritten signature in cursive script, appearing to read "Bryan Gould", written over the printed name.